IN THE UNITED STATES COURT OF APPEALS
FOR THE ARMED FORCES

UNITED STATES,
Appellee,

v.

ADDIEL A. GONZALEZ,
Private First Class (E-3),
United States Army,
Appellant.

USCA Dkt. No. 26-0121/AR
Crim. App. No. 20230599

SUPPLEMENT TO THE PETITION FOR GRANT OF REVIEW

WILLIAM E. CASSARA, Esq.
Civilian Appellate Counsel
P.O. Box 2688
918 Hunting Horn Way
Evans, GA 30809
(706) 860-5769
Email: bill@courtmartial.com
USCAAF Bar Number 26503

Index of Brief

Table of Authorities

Supreme Court

United States Court of Appeals for the Armed Forces/Court of Military Appeals

Service Courts of Appeal

Statutes

IN THE UNITED STATES COURT OF APPEALS
FOR THE ARMED FORCES

UNITED STATES, Appellee	)	**SUPPLEMENT TO THE PETITION FOR GRANT OF REVIEW**
v.	)	
ADDIEL A. GONZALEZ, Private First Class (E-3) United States Army, Appellant	)	USCA Dkt No. 26-0121/AR Crim. App. No. 20230599

TO THE HONORABLE JUDGES OF THE UNITED STATES COURT OF APPEALS FOR THE ARMED FORCES:

ISSUES PRESENTED

I.

WHETHER THE LOWER COURT ERRED IN FINDING THAT APPELLANT'S PLEA OF GUILTY WAS ENTERED INTO VOLUNTARILY.

II.

WHETHER THE LOWER COURT ERRED WHEN IT DETERMINED THAT APPELLANT'S INEFFECTIVE ASSISTANCE OF COUNSEL CLAIM WAS WITHOUT MERIT.

Statement of Statutory Jurisdiction

The Army Court of Criminal Appeals (Army Court) had jurisdiction over this matter pursuant to Article 66(b)(3), Uniform Code of Military Justice

(UCMJ), 10 U.S.C. § 866(b)(3) (2021). This Honorable Court has jurisdiction over this matter under Article 67(a)(3), UCMJ, 10 U.S.C. § 867(a)(3) (2021).

Statement of the Case

A military judge sitting as a general court-martial convicted Appellant, pursuant to his plea, of one specification of sexual assault, in violation of Articles 120, UCMJ, 10 U.S.C. §§ 920 (2019). Appellant was sentenced to fifty-five months total confinement and a dishonorable discharge from the United States Army. (R. at 129). The Military Judge entered judgment on December 15, 2023. (Judgment of the Court). The Convening Authority approved the findings and sentence, waiving automatic forfeitures for the benefit of Appellant's wife for 180 days. (Convening Authority Action).

Appellant appealed his conviction to the Army Court under Article 66, UCMJ, 10 U.S.C. § 866 (2021). On December 8, 2025, the Army Court affirmed the findings and sentence. *United States v. Gonzalez*, No. 20230599, 2025 CCA LEXIS 569 (Army Ct. Crim. App. Dec 8, 2025) (mem. op.) (Appendix A). Appellant submitted his petition to this Court on February 5, 2026 and moved to file this supplement separately. Counsel for Appellant hereby submits a Supplement to the Petition for Grant of Review under Rule 21 of this Court's Rules of Practice and Procedure.

Statement of Facts

On April 1, 2023, J.C. went to the Fort Wainwright Military Police Department and alleged that her husband, PFC Gonzalez, had raped her. (Gov.

Ex. 1 to Art. 32 Report, p. 1). She alleged that she had been raped three times over the previous three days and that she had learned that day that PFC Gonzalez had hidden cameras throughout the house in order to record her undressing and him raping her. (Gov. Ex. 1 to Art. 32 Report, p. 2). During the investigation, J.C. provided CID agents SD cards that she said came from the allegedly hidden cameras. (Gov. Ex. 1 to Art. 32 Report, p. 2).

PFC Gonzalez was issued a military protective order on April 3, 2023. (R. at 64). This order barred him from contacting his wife or children, required him to stay away from his family, their residence, and their workplace, and imposed other restrictions concerning interactions with his family. (R. at 94). Additionally, on April 7, 2023, PFC Gonzalez was issued additional restrictions on his liberty. (R. at 95). His pass privileges were revoked; he was ordered to sign in to the building CQ at 1800 and 2100 on duty days and at 0900, 1200, 1500, 1800, and 2100 on nonduty days; he had to sign out with platoon leadership and be escorted by an NCO in order to leave the squadron footprint; he was restricted from drinking alcohol; and he was restricted from several housing areas on the post. (R. 95-97). These conditions were imposed for three and a half months before they were eased. (R. 65). For approximately a month, PFC Gonzalez was restricted from contacting his wife and from housing areas on post, but was able to move more freely and pick up his children for visitation without an NCO escort. (R. 65). On August 22, 2023, a new order was issued

that reinstated most of the initial restrictions, although it removed two of the nonduty day sign ins. (R. 65, 96-97).

On November 4,2023, PFC Gonzalez was placed into pretrial confinement and remained there until his arraignment and court-martial on November 21, 2023. (R. at 98).

From the beginning of his attorney-client relationship with Trial Defense Counsel, PFC Gonzalez felt concerned about whether Trial Defense Counsel was taking the necessary steps to defend him. (Decl. of PFC Gonzalez, p. 2). He asked Trial Defense Counsel to seek video from places that the family had been on April 1, 2023, to show that he and his wife were interacting normally. (Decl. of PFC Gonzalez, p. 2). PFC Gonzalez also asked Trial Defense Counsel to obtain the messages his wife sent him before she recanted in which she was threatening to make even more allegations against him in an attempt to extort him for thousands of dollars. (Decl. of PFC Gonzalez, p. 2). He asked Trial Defense Counsel to get information from credit reporting agencies showing the loans he was seeking in order to buy his wife a car. (Decl. of PFC Gonzalez, p. 3). This fact was crucial to his defense because he and J.C. had a history of bartering sexual favors and fetishes for purchases, such as a car. (Decl. of PFC Gonzalez, p. 3).

Each time that PFC Gonzalez asked Trial Defense Counsel to track down information that would be helpful to his defense, Trial Defense Counsel told him to wait until CID had finished with its investigation. (Decl. of PFC

Gonzalez, p. 3). PFC Gonzalez and his wife were able to provide Trial Defense Counsel photographs from one location on April 1, 2023 and WhatsApp messages between the two that included her extortion threats. (Decl. of Trial Defense Counsel, p. 13). Trial Defense Counsel apparently took no steps to obtain additional evidence in support of PFC Gonzalez's innocence other than what PFC Gonzalez and his wife provided. (Decl. of Trial Defense Counsel, p. 12-13).

On May 8, 2023, J.C. returned to CID to inform them that she had made up the allegations against her husband. (Art. 32 Report, p. 2; Def. Ex. A to Art. 32 Report). She stated that she had consented to the sexual acts in question and that she had made the false report to the authorities in an attempt to gain custody of her children. (Art. 32 Report, p. 2; Def. Ex. A to Art. 32 Report).

An Article 32, UCMJ preliminary hearing was conducted on September 6, 2023. (Art. 32 Report, p. 1). At this hearing, J.C. testified on behalf of the defense. (Art. 32 Report, p. 1). She testified that no forced sexual acts occurred with the accused, that she was never in fear, and that she consented to all of the sexual conduct. (Art. 32 Report, p. 2). Again, J.C. testified that she made the false report against PFC Gonzalez in order to secure custody of her children in divorce proceedings. (Art. 32 Report, p. 2). The Preliminary Hearing Officer found no probable cause to believe that the accused committed any of the charged sexual or physical assaults upon J.C. (Art 32 Report, p. 1). He recommended that the charges and their specifications be dismissed and

disposed of by alternative disposition. (Art. 32 Report, p. 1). Despite this recommendation, the Government did not dismiss the charges and specifications.

PFC Gonzalez became more frustrated with the lengthy investigation, the restrictions placed upon him, and the feeling that Trial Defense Counsel was more aligned with the Government than him. (Decl. of PFC Gonzalez, p. 3). He and his wife wrote letters to Senator Murkowski at the end of September 2023. (Decl. of PFC Gonzalez, p. 3). In his letter, PFC Gonzalez discussed his discomfort with his attorney. (Decl. of PFC Gonzalez, p. 3).

After learning of the letter, Trial Defense Counsel met with PFC Gonzalez. (Second Decl. of PFC Gonzalez, p. 2). Trial Defense Counsel told PFC Gonzalez that although he was friends with the prosecutors outside of court, that they were "not friends while in court." (Second Decl. of PFC Gonzalez, p. 2). He also told PFC Gonzalez that he would be assigned a second, more experienced defense attorney to join the defense team. (Decl. of PFC Gonzalez, p. 3; Second Decl. of PFC Gonzalez, p. 2). PFC Gonzalez did not feel that he could tell Trial Defense Counsel that he did not want him to represent him. (Second Decl. of PFC Gonzalez, p. 2). He also believed that the presence of a second, experienced defense attorney on the team would make up for his discomfort with Trial Defense Counsel. (Second Decl. of PFC Gonzalez, p. 2-3). After this conversation, the second defense attorney never materialized. (Second Decl. of PFC Gonzalez, p. 2). While an attorney was detailed to his

case on October 16, 2023, PFC Gonzalez was never told of the detailing and never met this detailed attorney. (Second Decl. of PFC Gonzalez, p. 2). He was never contacted by Trial Defense Counsel's supervisor or by any other attorney about this detailing or the concerns raised in his letter. (Decl. of PFC Gonzalez, p. 3).

Sometime after this discussion of a new attorney, Trial Defense Counsel showed PFC Gonzalez five videos from the SD cards his wife had provided to CID. (Decl. of PFC Gonzalez, p. 3). Some of the videos appeared to be edited and the video and audio were not synchronized. (Decl. of PFC Gonzalez, p. 4). PFC Gonzalez informed Trial Defense Counsel that the SD cards contained other videos that would help to show the consensual nature of the sexual activities. (Decl. of PFC Gonzalez, p. 4). He told Trial Defense Counsel about specific instances that he recalled being videotaped that would show that his wife was aware of the cameras and was consenting to the sex acts. (Decl. of PFC Gonzalez, p. 4). Trial Defense Counsel told PFC Gonzalez that he did not know how to defend him and that the Government would convict him and he would go to jail for ten to twenty years. (Decl. of PFC Gonzalez, p. 4). PFC Gonzalez was not made aware of any attempts by Trial Defense Counsel to request the remaining videos from the Government to look for evidence helpful to the defense or to request an expert to examine the videos for alteration and edits. (Decl. of PFC Gonzalez, p. 4). PFC Gonzalez was so frightened by what

Trial Defense Counsel told him that he agreed to plead guilty. (Decl. of PFC Gonzalez, p. 5).

On November 8, 2023, the Government modified Specification 1 of Charge I to allege that PFC Gonzalez committed the sexual acts alleged in Specifications 1-3 of Charge I upon J.C. without her consent. The Government withdrew and dismissed Charge II and its specification the next day. (Charge Sheet). Also on 9 November 2023, PFC Gonzalez and Trial Defense Counsel signed an offer to plead guilty to the modified Specification 1 of Charge I. The Government prepared the plea deal and the stipulation of fact. (Decl. of PFC Gonzalez, p. 5).

PFC Gonzalez told Trial Defense Counsel that several elements of the stipulation of fact were inaccurate or incorrect, but Trial Defense Counsel told him that he had to stick to what the stipulation said in order to get the plea deal. (Decl. of PFC Gonzalez, p. 5). PFC Gonzalez heard a conversation between Trial Defense Counsel and Trial Counsel in which he determined that Trial Defense Counsel was negotiating for a reduced maximum cap on confinement if he did not ask for sentencing credit at court-martial. (Second Decl. of PFC Gonzalez, p. 5). This agreement was not made part of the plea agreement and was not disclosed to the Military Judge when the subject of *Mason* credit was raised. (App. Ex. 1, R. 97-99).

On November 14, 2023, the Convening Authority referred the modified charges and specifications to a general court-martial and accepted the defense

plea offer. Pursuant to this agreement, PFC Gonzalez signed a stipulation of fact on November 19, 2023, and entered a plea of guilty to Specification 1 of Charge I at trial on November 21, 2023.

During the providence inquiry, the Military Judge asked PFC Gonzalez about the offenses to which he was pleading guilty. (R. at 28-51). PFC Gonzalez frequently had to look at the stipulation of fact in order to know how to respond to the Military Judge's questions. (Decl. of PFC Gonzalez, p. 5). At one point, the Military Judge commented that he could see PFC Gonzalez referring to a document. (R. at 46). PFC Gonzalez said that he was referring to the stipulation of fact. (R. at 46).

The Military Judge asked PFC Gonzalez several times whether he was pleading guilty voluntarily and whether he believed that he really was guilty. (R. at 80-83). PFC Gonzalez told the Military Judge that he was pleading guilty voluntarily because he was scared that he would go to jail for ten to twenty years and not see his children. (Decl. of PFC Gonzalez, p. 5).

During the presentencing portion of his court-martial, the Military Judge learned of the conditions of PFC Gonzalez's pretrial restraint. (R. 89-97). The Military Judge expressly noted that although PFC Gonzalez had agreed to waive any motion for relief under Article 13, UCMJ, he was not prohibited from asking for confinement credit for restriction tantamount to confinement under *United States v. Mason*. (R. 97-98). Despite this helpful information, when asked whether PFC Gonzalez was entitled to any additional credit under *United*

States v. Mason, Trial Defense Counsel said that he was not and that PFC Gonzalez affirmatively waived the issue. (R. 99). The Military Judge asked PFC Gonzalez whether he agreed to this waiver. (R. 100). Without an explanation of *Mason* credit from either the Military Judge or Trial Defense Counsel, PFC Gonzalez agreed with his defense counsel. (Second Decl. of PFC Gonzalez, p. 5).

Reasons to Grant Review

The Army Court's determinations that PFC Gonzalez's plea was voluntary and that Trial Defense Counsel's representation of PFC Gonzalez was sufficient were in error and were decided in conflict with applicable decisions of the Supreme Court of the United States and of this Court.

The decision below that PFC Gonzalez's plea was voluntary is contrary to the rule laid out in *Brady v. United States*, 397 U.S. 742 (1970). The Army Court's decision ignores the facts raised in his two declarations concerning his requests and complaints that were continually ignored. The Army Court's opinion also completely omits any discussion of PFC Gonzalez's complaint to his Senator concerning Trial Defense Counsel's representation. In light of the complaint, Trial Defense Counsel promised PFC Gonzalez that he would be detailed an experienced attorney. When no supervisory attorney met with him to discuss his representation and the promise of a second defense attorney went unfulfilled, PFC Gonzalez believed that he had no choice but to plead guilty.

The lower court's determination that PFC Gonzalez's plea was voluntary and provident while ignoring this crucial matter was in error.

Likewise, the Army Court's finding that Trial Defense Counsel's representation was not deficient was in error and is in conflict with the law provided by *Strickland v. Washington*, 466 U.S. 668 (1984) and *United States v. Akbar*, 74 M.J. 364 (C.A.A.F. 2015). The Army Court's decision attributes efforts to investigate and to zealously represent PFC Gonzalez to Trial Defense Counsel based upon evidence gathered and testimony provided by PFC Gonzalez and his wife. The opinion does not identify any evidence gathered by Trial Defense Counsel in response to PFC Gonzalez's requests or his own efforts. Trial Defense Counsel's representation was deficient and his choices cannot be tied to reasonable strategic decisions. Additionally, the Army Court's analysis of Trial Defense Counsel's waiver of any credit pursuant to *United States v. Mason*, 19 M.J. 274 (C.M.A. 1985) (summ. disp) fails to acknowledge that while the terms of PFC Gonzalez's restriction might not have been uniform throughout the seven-month investigation, significant portions of the pretrial restriction were strict enough to have merited *Mason* credit.

This Court should grant review of PFC Gonzalez's case because the Army Court's decision is in conflict with relevant case law from the Supreme Court as well as this Court.

I.

WHETHER THE LOWER COURT ERRED IN FINDING THAT APPELLANT'S PLEA OF GUILTY WAS ENTERED INTO VOLUNTARILY.

Standard of Review

The voluntariness of a guilty plea is a question of law and is reviewed *de novo* on appeal. *Marshall v. Lonberger*, 459 U.S. 422, 431 (1983).

Law and Argument

"A guilty plea must be both voluntary and intelligent if it is to represent a constitutionally valid predicate for a conviction." *Brady*, 397 U.S. at 748. A plea of guilty entered by "one fully aware of the direct consequences, including the actual value of any commitments made to him by the court, prosecutor, or his own counsel" is voluntary unless "induced by threats (or promises to discontinue improper harassment), misrepresentation (including unfulfilled or unfulfillable promises) or perhaps by promises that are by their nature improper as having no proper relationship to the prosecutor's business (e.g. bribes)." *Id*. at 755.

PFC Gonzalez's plea of guilty was involuntary. It was induced by Trial Defense Counsel's representation that if he did not plead guilty he would be found guilty and sentenced to ten to twenty years confinement. By the time that PFC Gonzalez heard this from Trial Defense Counsel, he had been under investigation for over seven months. He had been subject to strict terms of

restriction for most of that period. (R. 94-99). He had asked his Trial Defense Counsel to seek evidence from businesses he and his family had visited during the days when his wife initially claimed to have been assaulted and injured. (Decl. of PFC Gonzalez, p. 2; Second Decl. of PFC Gonzalez, p. 3). He had asked Trial Defense Counsel to seek evidence of his efforts to obtain auto loans as part of the quid pro quo of his sexual bartering with his wife. (Decl. of PFC Gonzalez, p. 2). He had written a Senator expressing his discomfort with his attorney's representation. (Decl. of PFC Gonzalez, p. 3). No supervisor or other senior attorney in the defense chain brought him in to discuss his concerns. (Second Decl. of PFC Gonzalez, p. 2). Instead, Trial Defense Counsel brought him in to confront him and convince him to maintain the representation. (Second Decl. of PFC Gonzalez, p. 2). He had been promised an experienced defense attorney would be added to the team, but had not heard from any other attorney. In November 2023, Trial Defense Counsel brought him in to show him the videos recovered by CID. PFC Gonzalez told him that he was not guilty and that other videos not included in what Trial Defense Counsel had shown him would establish his wife's awareness of the cameras and consent to the sexual activity depicted. (Second Decl. of PFC Gonzalez, p. 4). Trial Defense Counsel made no apparent effort to locate any exculpatory video evidence and instead told PFC Gonzalez that he "did not know how to defend him" and that PFC Gonzalez would be sentenced to ten to twenty years in confinement if he pled not guilty. (Decl. of PFC Gonzalez, p. 4)

PFC Gonzalez felt that he had no choice but to plead guilty. Even his assertion that the stipulation of fact was inaccurate was rebuffed. Although Trial Defense Counsel made a few minor changes to the Government-drafted stipulation, PFC Gonzalez still found it to be inaccurate and lacking important context and details that would demonstrate the consensual nature of the acts described. (Second Decl. of PFC Gonzalez, p. 2-3). Trial Defense Counsel told him to answer the Military Judge in accordance with the stipulation of fact in order to get the benefit of the plea agreement. (Decl. of PFC Gonzalez, p. 5). By the time he got into court, PFC Gonzalez did not feel that he had any other choice than to plead guilty and to tell the Military Judge that he was guilty.

The Army Court's determination that PFC Gonzalez's plea was voluntary based upon his answer to the Military Judge's questions in court ignores the facts raised in his two declarations. *Gonzalez*, No. 20230599, 2025 CCA LEXIS 569 at *6-9. It ignores the helplessness PFC Gonzalez felt after his requests and complaints were continually ignored and Trial Defense Counsel's promise of another detailed attorney went unfulfilled.

Additionally, the Army Court's opinion completely omits any discussion of PFC Gonzalez's complaint to his Senator concerning Trial Defense Counsel's representation. *Id*. PFC Gonzalez told the Senator that he felt that he was being "set up to fail" by his defense counsel. (Decl. of Trial Defense Counsel, p. 33). Despite this red flag, no supervisory attorney met with him to discuss his representation and he never heard from the promised second defense

attorney. The Army Court's determination that PFC Gonzalez's plea was voluntary and provident while ignoring this crucial matter was in error. PFC Gonzalez asks this Court to grant his petition for review in order to remedy this error.

II.

WHETHER THE LOWER COURT ERRED WHEN IT DETERMINED THAT APPELLANT'S INEFFECTIVE ASSISTANCE OF COUNSEL CLAIM WAS WITHOUT MERIT.

Standard of Review

Members of the armed forces are entitled to the effective assistance of counsel. *United States v. Scott*, 24 M.J. 186, 187-88 (C.M.A. 1987). Appellate courts review claims of ineffective assistance of counsel *de novo*. *United States v. Perez*, 64 M.J. 239, 243 (C.A.A.F. 2006).

Law and Argument

A claim of ineffective assistance of counsel has two components: 1) a showing of deficient performance by counsel at trial, and 2) a showing that this deficiency prejudiced the defense. *Strickland*, 466 U.S. 668. In order to show deficiency in performance, an appellant must show that "counsel's representation fell below an objective standard of reasonableness." *Id*. at 688-90. Courts assessing counsel performance under this prong "examine whether counsel made an objectively reasonable choice in strategy from the available alternatives." *Akbar*, 74 M.J. at 379.

When assessing the second prong, an appellant "must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 698.

In the context of a guilty plea, the prejudice inquiry focuses on whether the defense counsel's constitutionally ineffective performance affected the outcome of the plea process. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985). An appellant "must show that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." *United States v. Alves*, 53 M.J. 286, 289 (C.A.A.F. 2000).

Defense counsel must "investigate adequately the possibility of evidence that would be of value to the accused in presenting a case." *United States v. Boone*, 49 M.J. 187, 196 (C.A.A.F. 1998). Counsel has a duty "to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." *Strickland*, 466 U.S. at 690-91.

Trial Defense Counsel's representation of PFC Gonzalez fell below an objective standard of reasonableness when he failed to take reasonable steps to investigate the case, failed to zealously defend his client, and failed to move for credit for restriction tantamount to confinement.

But for Trial Defense Counsel's failures to investigate and defend his client, PFC Gonzalez would not have pled guilty and would instead have gone

to trial. PFC Gonzalez was further prejudiced by the failure to litigate the *Mason* issue regarding confinement credit.

A. Failure to Investigate.

PFC Gonzalez gave Trial Defense Counsel areas to investigate to mount a defense in his case. He told Trial Defense Counsel where he and his wife had been on the day that she went to the Military Police and reported that she had been raped three times over the previous three days. (Decl. of PFC Gonzalez, p. 2). He asked Trial Defense Counsel to request security camera footage that would show J.C.'s appearance and demeanor as they interacted during a time when she claimed to have been repeatedly and violently assaulted. (Decl. of PFC Gonzalez, p. 2). PFC Gonzalez asked Trial Defense Counsel to gather evidence related to auto loans he had applied for in order to purchase a car for J.C.. (Decl. of PFC Gonzalez, p. 3). This evidence would have supported PFC Gonzalez's defense that the sexual acts the couple engaged in were frequently *quid pro quo* transactions.

When the Government uncovered videos from the SD cards J.C. provided, Trial Defense Counsel again failed to take reasonable steps to investigate. PFC Gonzalez informed Trial Defense Counsel that there were several more videos, including a video of J.C. looking directly at a camera to ensure that it was not blocked. (Decl. of PFC Gonzalez, p. 4). There were other videos that showed the consensual nature of the acts depicted and that would provide context and explanation for the select videos the Government had

provided. (Decl. of PFC Gonzalez, p. 4). Instead of requesting the remainder of the videos or requesting an expert to analyze the SD cards and the Government's videos, Trial Defense Counsel told PFC Gonzalez that he did not know how to defend him and that the Government would convict him with the videos. (Decl. of PFC Gonzalez, p. 4).

Without investigating any of the areas that PFC Gonzalez suggested, without looking closely into the video evidence or the obvious signs of editing, Trial Defense Counsel told PFC Gonzalez that there was nothing that he could do to defend him. (Decl. of PFC Gonzalez, p. 4). He told him that he would go to jail for ten to twenty years unless he pled guilty. (Decl. of PFC Gonzalez, p. 4).

Based upon this failure to make a reasonable investigation of the evidence, PFC Gonzalez felt his only option was to plead guilty to an offense he had told Trial Defense Counsel he had not committed.

The Army Court's decision points to the evidence gathered by Trial Defense Counsel in his investigation of the case, but does not discuss that each of these items were brought to him by PFC Gonzalez or his wife. *Gonzalez*, No. 20230599, 2025 CCA LEXIS 569 at *4. The opinion does not identify any evidence gathered by Trial Defense Counsel in response to PFC Gonzalez's requests or his own efforts. *Id*.

B. Failure to Zealously Defend.

Trial Defense Counsel told PFC Gonzalez that he had previously been a prosecutor and that he had a relationship with the prosecutor in this case. (Decl. of PFC Gonzalez, p. 3).

PFC Gonzalez told Trial Defense Counsel that he was not guilty. (Decl. of PFC Gonzalez, p. 5). J.C. recanted her allegations, said that the sexual acts were consensual, and told CID that she had made the allegations up to ensure she received custody of the children when she and PFC Gonzalez divorced. (Art. 32 Report, p. 2; Def. Ex. A to Art. 32 Report).

At the Article 32, UCMJ, hearing, J.C. testified under oath that PFC Gonzalez had not physically or sexually assaulted her. (Art. 32 Report, p. 2). She again testified that the allegations had been a ploy to gain custody of her children. (Art. 32 Report, p. 2). As a result of this testimony, the Preliminary Hearing Officer found no probable cause to support the offenses charged with respect to J.C. and recommended they be dismissed and handled with an alternative disposition. (Art. 32 Report, p. 1).

Despite the testimony by J.C. at the Article 32, UCMJ, hearing, after the videos were discovered, Trial Defense Counsel told PFC Gonzalez that the only way to avoid decades of confinement was to plead guilty. (Decl. of PFC Gonzalez, p. 4). Without any apparent investigation into the newly discovered evidence, Trial Defense Counsel determined that PFC Gonzalez had no chance of avoiding a long sentence to confinement and left him feeling that he had no

choice but to accept a plea agreement. He did not fulfill his ethical duty to zealously advocate for and defend his client, instead convincing a client who said that he was not guilty to plead guilty at trial. Trial Defense Counsel's representation fell below an objective standard of reasonableness.

The Army Court found Trial Defense Counsel's representation of PFC Gonzalez to be zealous because he persuaded the Preliminary Hearing Officer that no probable cause existed to support the charges at the Article 32, UCMJ, hearing. *Gonzalez*, No. 20230599, 2025 CCA LEXIS 569 at *4. The Army Court ignored the significance of J.C.'s testimony recanting her initial allegations and stating that the sexual acts in question were consensual to this finding. *Id*. Once additional evidence was recovered, Trial Defense Counsel failed to zealously advocate for PFC Gonzalez, turning instead to convincing him to plead guilty.

C. Failure to Move for *Mason* Credit.

This Court has long held that an accused in lawful pretrial confinement is entitled to day-for-day credit against adjudged confinement. *United States v. Allen*, 17 M.J. 126 (C.M.A. 1984). This credit was extended to situations involving pretrial restriction that is tantamount to confinement in *Mason*, 19 M.J. 274. "The determination whether the conditions of restriction are tantamount to confinement must be based on the totality of the conditions imposed." *United States v. Smith*, 20 M.J. 528, 530 (A.C.M.R. 1985).

Factors to consider in determining whether restriction is tantamount to confinement include:

> the nature of the restraint (physical or moral), the area or scope of the restraint (confined to post, barracks, room, etc.), the types of duties, if any, performed during the restraint (routine military duties, fatigue duties, etc.), and the degree of privacy enjoyed within the area of restraint. Other important conditions which may significantly affect one or more of these factors are: whether the accused was required to sign in periodically with some supervising authority; whether a charge of quarters or other authority periodically checked to ensure the accused's presence; whether the accused was required to be under armed or unarmed escort; whether and to what degree [the] accused was allowed visitation and telephone privileges; what religious, medical, recreational, educational, or other support facilities were available for the accused's use; the location of the accused's sleeping accomodations; and whether the accused was allowed to retain and use his personal property (including his civilian clothing).

Id. at 531-32.

PFC Gonzalez spent 211 days under a combination of conditions on liberty and what the Government termed restriction in lieu of arrest before being placed into pretrial confinement. (R. at 89-97). After hearing about the conditions of his restraint, the Military Judge made sure to inform the parties that while the plea agreement required waiver of any motions for Article 13, UCMJ, relief, it did not preclude a motion for *Mason* credit. (R. at 97-98). After this explanation, the Military Judge asked Trial Defense Counsel whether PFC Gonzalez was entitled to pretrial confinement credit from *United States v. Mason* or otherwise. (R. at 99). Trial Defense Counsel then inexplicably declined to ask for *Mason* credit, going so far as to affirmatively waive the

issue. (R. at 99-100). Trial Defense Counsel repeatedly noted that the waiver was not required by the plea agreement. (R. at 100). The Military Judge appeared surprised and explained that the case Trial Defense Counsel cited, *Smith*, 20 M.J. 528, had resulted in *Mason* credit. (R. at 100). Trial Defense Counsel again declined the opening provided by the Military Judge and again waived the issue on PFC Gonzalez's behalf. (R. at 100).

The Military Judge made it very clear that he was open to credit in this case. The factors listed in *Smith*, the case Trial Defense Counsel cited to, include the physical nature of the restraint, the area to which an individual is restrained, whether the individual is required to check in periodically with a supervising authority, whether the accused was required to be under escort, and the degree of visitation and telephone privileges afforded. The restraint initially imposed upon PFC Gonzalez involved physical restraint to the squadron area. He was no longer allowed to leave post, he could not go to several housing areas on post, he could not leave the squadron area without permission from leadership and an NCO escort. He had to check in with the building CQ several times a day and his ability to have visitation with or telephone calls with his children was severely curtailed. In addition to these factors, the length of the pretrial restraint also weighed towards the granting of credit.

Trial Defense Counsel claimed that he waived the issue because he was aware of the relaxation of the initial restriction terms over the seven months of the investigation. (Decl. of Trial Defense Counsel, p. 8-9). PFC Gonzalez told

the Military Judge that the initial restriction lasted for three and a half months, was largely lifted for a month, and then was reimposed three months before trial. (R. 65). What Trial Defense Counsel did not address was why he did not move for credit for the periods during which the restriction terms were the most severe. Both at the beginning of the investigation and then again in August 2023, restriction was imposed that met the criteria from *Smith*.

With a Military Judge who gave all indications that he would evaluate the totality of the circumstances and potentially grant *Mason* credit, Trial Defense Counsel had no apparent reason to waive the issue rather than litigate it. His failure to move for *Mason* credit was another example of performance well below an objectively reasonable level.

Like Trial Defense Counsel, the lower court's analysis of this component of Trial Defense Counsel's performance treats the entire seven months of pretrial restriction as an all or nothing proposition. *Gonzalez*, No. 20230599, 2025 CCA LEXIS 569 at *11. Pointing to Trial Defense Counsel's description of the period during which PFC Gonzalez's restriction was significantly relaxed, the court ignores the fact that significant portions of the restriction contained terms included in the *Smith* factors. *Id*.

PFC Gonzalez asks this Court to grant review to remedy the error in the lower court's determination that Trial Defense Counsel's representation was not deficient.

Conclusion

WHEREFORE, Appellant respectfully requests this Honorable Court grant his petition for review.

/S/ Wiliam E. Cassara
WILLIAM E. CASSARA
Civilian Appellate Counsel
P.O. Box 2688
918 Hunting Horn Way
Evans, GA 30809
(706) 860-5769
bill@courtmartial.com
USCAAF Bar Number 26503

Certificate of Compliance

1. This Supplement complies with the type-volume limitation of Rule 21(b) because it contains less than 9,000 words.

2. This Supplement complies with the type-style requirements of Rule 37 because it has been prepared with monospaced typeface using Microsoft Word with 14 point, Times New Roman font.

/S/ William E. Cassara
WILLIAM E. CASSARA
Civilian Appellate Counsel
P.O. Box 2688
918 Hunting Horn Way
Evans, GA 30809
(706) 860-5769
bill@courtmartial.com
USCAAF Bar Number 26503

Appendix A

UNITED STATES ARMY COURT OF CRIMINAL APPEALS

Before
COOPER, WILLIAMS, and SCHLACK
Appellate Military Judges

UNITED STATES, Appellee
v.
Private First Class ADDIEL A. GONZALEZ
United States Army, Appellant

ARMY 20230599

Headquarters, 11th Airborne Division and U.S. Army Alaska
Larry A. Babin, Jr., Military Judge
Colonel William D. Smoot, Staff Judge Advocate

For Appellant: Captain Amir R. Hamdoun, JA; William E. Cassara, Esquire (on brief); Captain Andrew W. Moore, JA; William E. Cassara, Esquire (on reply brief).

For Appellee: Colonel Richard E. Gorini, JA; Major Stephen L. Harmel, JA; Captain Dominique L. Dove, JA (on brief).

8 December 2025

MEMORANDUM OPINION

This opinion is issued as an unpublished opinion and, as such, does not serve as precedent.

WILLIAMS, Judge:

Appellant raises four assignments of error, which merit discussion but no relief. Appellant alleges his defense counsel was ineffective because he failed to investigate appellant's case, failed to zealously represent appellant, failed to request credit for restriction tantamount to confinement, and failed to move for dismissal pursuant to Rule for Courts-Martial [R.C.M.] 707.[1] Appellant further avers his guilty plea was improvident because he was compelled to plead guilty by his defense counsel. Appellant also claims he is entitled to confinement credit pursuant to *United States v. Mason*, 19 M.J. 274 (C.M.A. 1985). Finally, he contends the

---

[1] Appellant's second, third, and fourth assignments of error present similar questions outside the context of ineffective assistance of counsel. We will disaggregate appellant's allegations of ineffective assistance of counsel and address each alongside assigned errors II (Plea Involuntary); III (Restriction Tantamount to Confinement), and IV (R.C.M. 707).

military judge erred by not dismissing his case when the government violated his right to a speedy trial under R.C.M. 707. We disagree.

BACKGROUND

Appellant surreptitiously recorded himself sexually assaulting his wife, or attempting to do so, on multiple occasions. His wife reported the malfeasance to U.S. Army Criminal Investigation Division (CID) special agents. She provided digital media cards to support her allegations.

Appellant's command implemented conditions on his liberty after his wife's allegations. Generally, these conditions limited his ability to leave post and to travel to certain locations on post. Additionally, appellant's travel on post was conditioned on having an escort. These conditions were imposed over two different periods with an approximate month gap between.

The prosecution of appellant's crimes took multiple turns. His wife recanted her allegations shortly after her initial complaint, and the government took several months to prefer charges and conduct an Article 32 preliminary inquiry. During this period, defense counsel interviewed appellant's wife multiple times. As a result of these interviews, defense counsel called appellant's wife to testify at the preliminary hearing. She testified favorably for appellant. The preliminary hearing officer did not find probable cause that the offenses occurred and recommended against trial by court-martial. Later, CID agents recovered deleted videos from the digital media cards appellant's wife provided when she made her initial complaint. Soon after appellant reviewed these videos, he pleaded guilty.

The military judge sitting as a general court martial found appellant guilty, pursuant to his plea, of one specification of sexual assault in violation of Article 120, Uniform Code of Military Justice, 10 U.S.C. § 920 [UCMJ], and sentenced him to fifty-five months of confinement, reduction to E-1, and a dishonorable discharge.

LAW AND DISCUSSION

A. Defense Counsel was not Ineffective

Appellant argues his defense counsel was ineffective because defense counsel did not adequately investigate his case and failed to secure evidence that appellant believed would help his case.

1. Law

We review allegations of ineffective assistance of counsel de novo. *United States v. Furth*, 81 M.J. 114, 117 (C.A.A.F. 2021) (citing *United States v. Carter*, 79 M.J. 478, 480 (C.A.A.F. 2020)). "To prevail on an ineffective assistance claim, the appellant bears the burden of proving that the performance of defense counsel was deficient and that the appellant was prejudiced by the error." *United States v. Captain*, 75 M.J. 99, 103 (C.A.A.F. 2016) (citing *Strickland v. Washington*, 466 U.S. 668, 698 (1984)).

"With respect to *Strickland*'s first prong, courts 'must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance.'" *United States v. Datavs*, 71 M.J. 420, 424 (C.A.A.F. 2012) (quoting *Strickland*, 466 U.S. at 689). This presumption can be rebutted by "showing specific errors that were unreasonable under prevailing professional norms." *United States v. McConnell*, 55 M.J. 479, 482 (C.A.A.F. 2001) (citation omitted).

"As to the second prong, a challenger must demonstrate 'a reasonable probability that, but for counsel's [deficient performance] the result of the proceeding would have been different.'" *Datavs*, 71 M.J. at 424 (quoting *Strickland*, 466 U.S. at 694) (alteration in original). "'It is not enough to show that the errors had some conceivable effect on the outcome . . . .'" *Id.* (quoting *Harrington v. Richter*, 562 U.S. 86, 104 (2011). Courts may analyze the two prongs under *Strickland* independently, and if appellant fails to meet either prong, the claim fails. 466 U.S. at 697 (Stating an appellate court "need not determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies."). "If it is easier to dispose of an [IAC] claim on the ground of lack of sufficient prejudice, which we expect will often be so, that course should be followed." *Id.*

When a claim of ineffective assistance of counsel is raised on appeal, this court applies the principles established in *United States v. Ginn* to determine whether it may decide the case without further proceedings. 47 M.J. 236 (C.A.A.F. 1997). While this court has "factfinding power on collateral claims," Article 66, UCMJ, limits that power. *Id.* at 242. Consequently, we may consider affidavits, but we do not have the discretion "to decide disputed questions of fact pertaining to a post-trial claim, solely or in part on the basis of conflicting affidavits submitted by the parties." *Id.* at 243.[2] Such questions of fact must be resolved in a post-trial

[2] Although there are disagreements between appellant's and his defense counsel's affidavits, any disputes can be resolved from the record of trial. Accordingly, we do not require a post-trial evidentiary hearing. *Ginn*, 47 M.J. at 248.

evidentiary hearing. *Id.* at 248. On the other hand, if the facts are uncontroverted or, if we can resolve any dispute about the material facts raised in competing affidavits from the record of trial or the appellate filings, we may decide the legal issue without further proceedings. *Id.*

2. Analysis

Although we could easily dispose of appellant's challenge on prejudice grounds[3], we find his defense counsel was not deficient. Defense counsel investigated the leads provided, interviewed witnesses, obtained documentary and photographic evidence, and cogently presented a compelling case to a preliminary hearing officer.[4] Defense counsel's zealous representation persuaded a preliminary hearing officer that there was not probable cause to support the charges and their specifications. Even after CID special agents recovered deleted videos of appellant's sexual assaults, defense counsel negotiated a favorable plea agreement. Appellant's criticism that his counsel did not investigate or zealously represent him is contradicted by the record and the information provided by defense counsel in his affidavit.

B. Appellant's Plea was Provident

Appellant maintains his guilty plea was improvident because his defense counsel "scared" him into pleading guilty. Appellant's claim is unavailing, as the record plainly establishes appellant pleaded guilty voluntarily, with full knowledge of its meaning and effect, because he was, in fact, guilty of the offense to which he pleaded guilty. Additionally, appellant fails to persuade that he would not have pleaded guilty but for his counsel's purported deficiencies.

1. Law

This court reviews a military judge's acceptance of a guilty plea for an abuse of discretion." *United States v. Inabinette*, 66 M.J. 320, 322 (C.A.A.F. 2008). After a military judge accepts a plea as provident, "an appellate court will not reverse that finding and reject the plea unless it finds a substantial conflict between the plea and

---

[3] Claims of ineffective assistance of counsel are often easier to dispose of on prejudice grounds and, if they can be, that is the preferred course. *Strickland*, 466 U.S. at 697.

[4] Defense counsel's affidavit and supporting documents show he investigated and obtained the materials appellant now suggests would have altered his decision to plead guilty to include: 1) messages between appellant and his wife; 2) financial records of money transfers from appellant to his wife, and 3) photos of appellant's wife depicting her without "bruises or signs of distress."

the accused's statements or other evidence of record." *United States v. Garcia*, 44 M.J. 496, 498 (C.A.A.F. 1996). We review "questions of law arising from the guilty plea de novo." *United States v. Murphy*, 74 M.J. 302, 305 (C.A.A.F. 2015) (quoting *Inabinette*, 66 M.J. at 322). "The voluntariness of a plea is a question of law which is reviewed de novo on appeal." *United States v. Andrews*, 38 M.J. 650, 653 (A.C.M.R. 1993) (citing *Marshall v. Lonberger*, 459 U.S. 422, 431 (1983)).

When a claim of ineffective assistance is raised in the context of a guilty plea, appellant must demonstrate a "'reasonable probability that, but for counsel's errors, [he] would not have pleaded guilty and would have insisted on going to trial'" to establish prejudice. *Furth*, 81 M.J. at 117 (quoting *Lee v. United States*, 582 U.S. 357, 364–65 (2017)). "'Surmounting *Strickland*'s high bar is never an easy task.'" *Lee*, 582 U.S. at 368 (quoting *Padilla v. Kentucky*, 559 U.S. 356, 371 (2010)). A court should not disrupt a guilty plea "solely because of *post hoc* assertions from a[n accused] about how he would have pleaded but for his attorney's deficiencies." *Id.* Instead, it should "look to contemporaneous evidence to substantiate a[n accused's] express preferences." *Id.*

2. Additional Facts

A detailed description of every sexual assault appellant perpetrated on his wife is unnecessary. Suffice it to say, appellant, under oath, admitted he penetrated his wife's vulva on divers occasions, and her mouth, and her anus, with his penis, without her consent. He also stipulated, in detail, as fact, his repeated assaults.

Appellant secretly recorded his sexual assaults. When his wife discovered appellant had recorded her, she had him delete the recordings through a phone application. Appellant and his wife then collected the cameras, removed the digital media cards, and disposed of the cameras in the garbage.

Appellant's wife went to CID and alleged that appellant sexually assaulted her. She provided the digital media cards to CID special agents as potential evidence. She also provided a statement that described appellant's abuse. Approximately a month later, she recanted her allegations. The special agents did not cease their investigative efforts. Through these ongoing efforts, the special agents successfully recovered deleted videos from the digital media cards. These videos captured appellant sexually abusing his wife.

After appellant reviewed the recovered videos, he elected to plead guilty at a general court-martial. Some of the recovered videos were admitted as a prosecution exhibit during the court-martial.

Before accepting appellant's guilty plea, the military judge conducted a thorough providence inquiry. This inquiry ensured appellant understood the

meaning and effect of his guilty plea. Further, it established appellant pleaded guilty because he was guilty. The military judge afforded appellant every opportunity to say he was not guilty and to demand the government prove its case with competent evidence beyond a reasonable doubt. With full awareness of his rights, appellant declined to do so.

In addition to his sworn testimony, appellant voluntarily stipulated to facts that established his guilt. The military judge explicitly advised appellant, "[n]o one can be forced to enter into a stipulation," and that appellant, "should enter into it only if [he] truly want[ed] to do so," and that if admitted, the contents of the stipulation would be uncontradicted facts in the case. Appellant agreed he voluntarily entered the stipulation of fact because he believed it was in his best interest.

The military judge advised appellant of his rights regarding the stipulation and ensured appellant understood them. The military judge asked appellant to inform him "if there [was] anything [appellant] disagree[d] with or [felt was] untrue." The military judge did not rush appellant's review of his stipulation of fact. In fact, the military judge recessed the court-martial for twenty-two minutes so appellant could read the nine-page stipulation of fact. After affording ample time and opportunity to review the document, the military judge continued his inquiry:

MJ:	[Appellant] have you finished reading the stipulation of fact?
[Appellant]:	Yes, your honor.
MJ:	Is everything in the stipulation true?
[Appellant]:	Yes, your honor.
MJ:	Is there anything in the stipulation that you do not wish to admit is true?
[Appellant]:	No, your honor.
MJ:	Do you agree, under oath, that the matters contained in the stipulation are true and correct to the best of your knowledge and belief?
[Appellant]:	Yes, your honor.

3. Analysis[5]

Appellant's plea of guilty was voluntary. His claim that his defense counsel "scared" him into pleading guilty and that his plea was involuntary is unpersuasive.[6] Reviewing all relevant circumstances surrounding appellant's plea it is evident he pleaded guilty voluntarily.

Appellant's sworn testimony, stipulation of fact, and the videos of the sexual assault, admitted during appellant's guilty plea, were consistent and supported a rational and reasonable preference for appellant to plead guilty. Therefore, appellant's plea of guilty is void of "a substantial basis in law or fact [to] question[] the plea." *See United States v. Goodman*, 70 M.J. 396, 399 (C.A.A.F. 2011) (citation omitted). Both the stipulation of fact and the videos admitted corroborated appellant's colloquy with the military judge. Appellant, fully informed of his rights, voluntarily admitted, under oath, to sexually assaulting his wife, vaginally, orally, and anally, without her consent. Consequently, appellant's unequivocal admissions were provident, and the record before this court contradicts appellant's post-trial affidavit.[7] *See id.* (observing courts consider "the full context of the plea inquiry" to

---

[5] Appellant's second assignment of error asserts his plea was improvident. A subcomponent of his first assignment of error avers his defense counsel was ineffective because he did not "zealously defend" his client and instead convinced appellant to plead guilty. Accordingly, we address both the providence of appellant's plea and ineffective assistance of counsel in this section.

[6] Trial defense counsel established through emails that appellant's family hired a civilian defense counsel (CDC) to review appellant's case. Appellant acknowledges this in his second affidavit but claims he did not speak with the CDC. Contrary to appellant's claim, trial defense counsel noted the CDC held a conference call with himself and appellant, among others. It is unnecessary to resolve this dispute. Considering the videos that captured the charged sexual assaults, the CDC stated the plea agreement secured was "too good to be true," and surmised that appellant would receive a substantial sentence—fifteen to twenty-five years confinement—if he contested the case. If appellant heard this assessment, it reinforced his decision to plead guilty. If he did not hear it, the assessment bolstered the reasonableness of trial defense counsel's advice to appellant that he faced significant punitive exposure outside the protections of a plea agreement. Competently advising a client on the risk presented by a contested trial is not coercive and does not invalidate a guilty plea.

[7] Accordingly, we may resolve this case without a post-trial evidentiary hearing. *See Ginn*, 47 M.J. at 244 (noting a hearing "need not be ordered if an appellate court

(continued . . .)

include appellant's stipulation of fact, when determining if there is a substantial inconsistency (internal quotations omitted) (citation omitted)).

Appellant's rationale under this assignment of error for why his counsel was ineffective largely mirrors his assertion for why his plea was improvident. For the same reasons we find his guilty plea was voluntary and thus provident, we find he fails to establish prejudice. Simply stated, appellant cannot overcome the formidable standard established by *Strickland*. *See Lee*, 582 U.S. at 368. Appellant has not demonstrated a "reasonable probability . . . he would not have pleaded guilty and would have insisted on going to trial." *See Furth*, 81 M.J. at 117.

Irrespective of the exceedingly probative video evidence of appellant's guilt, defense counsel still secured favorable conditions through plea negotiations. The terms of the plea agreement dramatically limited the number of charges and specifications for which he would be prosecuted.[8] Appellant's accepted offer limited his punitive exposure further by combining three sexual assault offenses into a single specification.[9] Thus, appellant ultimately pleaded guilty to only one specification of sexual assault.[10] Appellant's punitive exposure was even further limited by a sixty-month cap on confinement.

Evidence contemporaneous with appellant's guilty plea substantiates his preference to plead guilty. Notwithstanding his wife's recantation, after investigators discovered videos of appellant's crimes, he quickly decided to plead guilty. Consequently, it is not reasonable to conclude appellant's plea was involuntary and that he would have insisted on going to trial but for being "scared" into pleading guilty by his defense counsel. *Lee*, 582 U.S. at 369 ("Courts should not upset a plea solely because of *post hoc* assertions" but rather should "look to contemporaneous evidence to substantiate [an appellant]'s expressed preferences.").

(. . . continued)
can conclude that the motion and the files and records of the case conclusively show that an appellant is entitled to no relief." (internal marks omitted) (citation omitted)).

[8] Initially, the government referred two specifications of willful disobedience, three specifications of sexual assault, one specification of indecent visual recording, thirteen specifications of domestic violence, and one specification of obstruction of justice, in violation of Articles 90, 120, 120c, 128b, and 131b, UCMJ.

[9] Appellant faced a maximum punitive exposure of 174 years and four months absent his agreement with the convening authority.

[10] The remaining specifications and charges were conditionally dismissed.

Additionally, "the full context of [appellant's] plea inquiry" makes clear there is not a substantial basis in law or fact to question his plea. *See Goodman*, 70 M.J. at 399.

C. Restriction Tantamount to Confinement

Appellant argues he should receive credit for restrictions tantamount to confinement and his defense counsel was ineffective because he failed to move for *Mason* credit. First, because appellant was not so restricted, he is not entitled to credit. Second, defense counsel was not ineffective because a motion for *Mason* credit would not have been meritorious.

1. Law

A soldier, who is not confined pending trial, may be entitled to confinement credit if he is subject to pretrial restrictions so severe as to render the restrictions tantamount to confinement. *Mason*, 19 M.J. 274. Analysis whether restrictions are severe enough to be tantamount to confinement is "based on the totality of the conditions imposed." *United States v. Smith*, 20 M.J. 528, 530 (A.C.M.R. 1985), pet. denied, 21 M.J. 169 (C.M.A. 1985). This analysis will "closely scrutinize those factors which reflect substantial impairment of the basic rights and privileges enjoyed by servicemembers." *Id.* at 531. "[L]evels of restraint . . . fall somewhere on a spectrum that ranges from 'restriction' to 'confinement.'" *Id.* Scrutiny of the conditions imposed will identify whether "the level of restraint falls so close to the 'confinement' end of the spectrum as to be tantamount thereto . . . ." *Id.* (citing *Mason*, 19 M.J. 274).

Our predecessor court outlined several relevant factors to determine the nature of the pretrial restraint including: "the nature of the restraint (physical or moral), the area or scope of the restraint (confined to post, barracks, room, etc.), the types of duties, if any, performed during the restraint (routine military duties, fatigue duties, etc.), and the degree of privacy enjoyed within the area of restraint." *Id.* The *Smith* court outlined additional conditions which may significantly affect one or more of the above factors. These conditions include:

> whether the accused was required to sign in periodically with some supervising authority; whether a charge of quarters or other authority periodically checked to ensure the accused's presence; whether the accused was required to be under armed or unarmed escort; whether and to what degree the accused was allowed visitation and telephone privileges; what religious, medical, recreational, educational, or other support facilities were available for the accused's use; the location of the accused's sleeping accommodations; and whether the accused was allowed to

> retain and use his personal property (including his civilian clothes).

Id. at 531–32.

When a claim of ineffective assistance of counsel is based on a failure to make a motion, appellant "must show that there is a reasonable probability that such a motion would have been meritorious." *United States v. Napoleon*, 46 M.J. 279, 284 (C.A.A.F. 1997) (citations omitted).

2. Additional Facts

After appellant's wife reported his sexual assaults to CID, appellant's commander placed conditions on his liberty. His commander issued a military protective order (MPO) on 3 April 2023. This order directed appellant to remain 1000 feet away from his spouse, home, and his spouse's workplace.

Appellant's commander imposed additional conditions on appellant's liberty on 7 April 2023. Appellant was informed he could not go to the housing areas, and other specified buildings on post. Appellant testified he could not leave the barracks without a noncommissioned officer escort. Per his testimony, appellant was able to go to the gym and dining facility with a junior enlisted escort. He also was directed not to drink alcohol.[11]

In addition to the conditions placed on his movement, appellant had periodic sign in requirements for accountability. On duty days he was directed to check in at the end of the duty day twice: 1800 and 2100 hours. On non-duty days he was to check in periodically in three-hour increments between 0900 and 2100 hours. He was not required to check in after 2100 hours.

Appellant retained several key liberties. He testified, while he could not take his children "off the building," he could pick them up with an escort and bring them

[11] Appellant notes in his brief that he could not leave "the squadron's footprint unless given permission by his command . . . ." He cites the record for this premise. The record only notes he was required to sign out with platoon leadership when he intended to leave the area for more than fifteen minutes. The record does not state he had to obtain permission before he could leave. Neither affidavit submitted by appellant states he required command permission to leave the area.

to his room.[12] He informed his defense counsel he was allowed to eat pizza and play games with his children, in his room, for several hours at a time. He informed his defense counsel that, while frustrated he needed NCO supervision to pick up and drop off his children, he was able to spend time alone with them at an on-post park. Appellant performed his normal military duties commensurate with his rank. Appellant told his defense counsel he kept his personal cell phone, could play video games with friends with his Xbox, retained his personal computer, and kept his civilian clothes and personal effects. Appellant was even permitted to drive his personal vehicle around post.

Appellant's conditions on liberty were not continuous from the date of his wife's allegations until his court-martial. In July 2023, approximately three months after imposing the conditions, appellant's commander lifted almost all the conditions on his liberty. Appellant testified that after the commander lifted most of the conditions:

> the MPO was still in place, but I could leave post, I could go pick my kids up without an NCO escort . . . . I could go off post with them and I could do any activity that didn't involve being near the housing areas or my wife.

Consequently, the record is clear there was a sizable break in time between periods when appellant—outside of the MPO—had almost complete freedom of movement. Appellant remained free of any condition—other than the MPO's limitation concerning his wife—for a month and a couple of days.[13]

---

[12] Appellant avers in his brief he was not allowed visitation with his children or allowed to call them without command permission citing the record. While not directly stated, his brief suggests these limitations were continuous. His present assertion is contradicted by his own testimony during his court-martial. A review of the record page appellant cited notes the heightened limitation was during a 72-hour period to allow the Family Advocacy Program time to complete an in-home and clinical assessment. However, earlier in the record, appellant testified he was allowed visitation with his children, even when restricted. Appellant also observed he could pick up his children without an escort and leave post with them during the time his commander lifted the conditions on his liberty. Appellant's court-martial testimony is corroborated by defense counsel's unrebutted affidavit.

[13] Appellant suggests in his reply brief to this court that the conditions on liberty were never lifted. Appellant's Reply Br., p. 4. This statement is incongruent with his sworn testimony at his court-martial where he clearly stated "those restrictions were lifted, eventually. I spent 3 months and a half under those restrictions, and they were lifted for about a month."

3. Analysis[14]

Close scrutiny of the facts surrounding the conditions on appellant's liberty does not suggest he suffered a "substantial impairment of the basic rights and privileges enjoyed by servicemembers." *Smith*, 20 M.J. at 531. The totality of the conditions imposed on appellant does not demonstrate he was effectively confined.[15] While his movement was limited, he was permitted access to the gym and dining facility. There is nothing to suggest he could not attend worship services, go to the post exchange, library, etc. While he may have required an escort, nothing indicates he was denied an escort when requested.

Appellant enjoyed significant privacy within the area of restraint. He lived in a barracks room and was not under guard or surveillance. He retained his personal effects, his civilian clothes and was permitted full use of his phone, Xbox, and computer, without supervision. He could visit with his children alone in his room and was generally unencumbered by periodic check-ins from his unit while he was in his room.

Although appellant had to sign in with the charge of quarters desk periodically, this requirement was not onerous. When conditions on his liberty were reimposed on 22 August 2023, the non-duty day sign in requirements were further limited in frequency to 0900, 1500, and 1900 hours.

Applying the *Smith* factors to appellant's circumstance and considering the conditions on his liberty holistically with his retained freedoms, it is evident he was not "subject[ed] to pretrial restrictions so severe as to render the restrictions tantamount to confinement." *United States v. Wright*, ARMY 20230333, 2025 CCA

---

[14] Appellant argues in his first assignment of error his defense counsel was ineffective because he failed to request *Mason* credit. In his third assignment of error, he claims he is entitled to *Mason* credit. Accordingly, both assertions are addressed in this section.

[15] Development of this topic was not a model of clarity on the record. Trial counsel amended the charge sheet to annotate the nature of appellant's restraint as "restriction in lieu of arrest" from 3 April 2023 to 3 November 2023, and "conditions on liberty" from 3 April 2023 to 3 November 2023. The unbroken temporal span is certainly incorrect. Additionally, we are not bound by the government's characterization of the nature of the restraint as "restriction in lieu of arrest." *See United States v. Wilkinson*, 27 M.J. 645, 649 (A.C.M.R. 1988) (citing *United States v. Walls*, 9 M.J. 88, 90 (C.M.A. 1980)) (observing the "legal effect of restraint imposed upon an accused prior to trial is to be judicially determined."). Here it is evident appellant was not restricted in lieu of arrest and the command merely imposed conditions on his liberty.

LEXIS 353, at *8 (Army Ct. Crim. App. 29 July 2025) (mem. op.) (citing *Mason*, 19 M.J. 274), pet. denied __ M.J. __, 2025 CAAF LEXIS 922 (C.A.A.F. 5 Nov. 2025). Analysis of the relevant factors demonstrate the conditions on appellant's liberty did not amount to a "level of restraint . . . so close to the 'confinement' end of the spectrum as to be tantamount thereto . . . ." *See Smith*, 20 M.J. at 531.

Trial defense counsel was not ineffective for failure to move for *Mason* credit because appellant cannot "show that there is a reasonable probability that such a motion would have been meritorious." *Napoleon*, 46 M.J. at 284. As discussed, the conditions on appellant's liberty were not so onerous that he was essentially confined. Consequently, a motion for *Mason* credit would not be meritorious and counsel was not ineffective for not making one. *See id.*

D. Speedy Trial: Rule for Courts-Martial 707

Appellant waived his R.C.M. 707 claim.[16] Even if not waived, his contention the military judge erred by not dismissing the charges and specifications on speedy trial grounds lacks merit. He was not subject to restrictions tantamount to confinement, as he suggests. Accordingly, R.C.M. 707 was not triggered until charges were preferred on 21 August 2023, and he was arraigned within 120 days.

1. Law

We review whether an issue is waived de novo. *United States v. Davis*, 79 M.J. 329, 331 (C.A.A.F. 2020). It is clear, in the current version of R.C.M. 707(e), an unconditional plea of guilty waives a speedy trial claim to that offense. The President amended R.C.M 707(e) through Executive Order 14,103. 88 Fed. Reg. 50,535 (Aug. 2, 2023) [Exec. Order 14,103]. The amendment states an accused waives any speedy trial issue related to the offense to which he unconditionally pleaded guilty. *Id.* at 50,556–57. Prior to the amendment, the R.C.M. provided an unconditional guilty plea merely forfeited the issue on appeal. Rule for Courts-Martial 707(e), *Manual for Courts-Martial, United States* (2019 ed.). But "forfeit" was amended to "waived," effective 28 July 2023; the day the President signed Exec. Order 14,103. 88 Fed. Reg. 50,535–536.

The Court of Appeals for the Armed Forces reiterated the difference between waiver and forfeiture by stating: "'[w]hereas forfeiture is the failure to make the timely assertion of a right, waiver is the intentional relinquishment or abandonment of a known right.'" *Davis*, 79 M.J. at 332 (quoting *United States v. Gladue*, 67 M.J. 311, 313 (C.A.A.F. 2009)). Thus, this court may "review forfeited issues for plain

[16] Appellant briefly alludes to Article 10, UCMJ, in his opening and reply briefs. We have considered his undeveloped assertion and find it lacks merit.

error," but "'we cannot review waived issues at all because a valid waiver leaves no error for us to correct on appeal.'" *Id.* (quoting *United States v. Campos*, 67 M.J. 330, 332 (C.A.A.F. 2009)).

2. Analysis

Appellant waived any allegation of error pursuant to R.C.M. 707. Both appellant and government counsel incorrectly contend appellant merely forfeited his R.C.M. 707 claim. The government preferred charges and reimposed conditions on his liberty on 22 August 2023, a date after the effective date of the amendments directed by Exec. Order 14,103. 88 Fed. Reg. 50,535–36. Therefore, in accordance with the amendment to R.C.M. 707(e), appellant waived any speedy trial issue related to the offense to which he unconditionally pleaded guilty and we "cannot review waived issues at all." *Davis*, 79 M.J. at 331 (quoting *Gladue*, 67 M.J. at 313) (internal quotations omitted).

Even if not waived, appellant is not entitled to relief. Appellant was neither confined nor subject to a restriction tantamount to confinement. UCMJ art. 10; R.C.M. 707(a). Further, the conditions on his liberty—irrespective of appellant's arguments on appeal—were not continuous from 7 April 2023 to 21 November 2023 (the date of arraignment). Appellant's commander lifted restrictions in July 2023 for over a month. Accordingly, his calculation that 228 days elapsed is incorrect. There was an approximate 30-day break which is sufficient to have restarted the R.C.M. 707 clock. R.C.M. 707(b)(3)(B). Accordingly, defense counsel was not ineffective for failure to move to dismiss because appellant cannot "show that there is a reasonable probability that such a motion would have been meritorious." *See Napoleon*, 46 M.J. at 284.

CONCLUSION

On consideration of the entire record, the finding of guilty and the sentence is AFFIRMED.

Senior Judge COOPER and Judge SCHLACK concur.

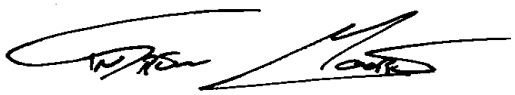
FOR THE COURT:

James W. Herring, Jr.

JAMES W. HERRING, JR.
Clerk of Court

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing in the case of *United States v. Gonzalez*, Crim. App. Dkt. No. 20230599, USCA Dkt. No. 26-0121 /AR was electronically filed with the Court and Government Appellate Division on February 26, 2026.



Andrew W. Moore
Captain, Judge Advocate
Appellate Defense Counsel
Defense Appellate Division
U.S. Army Legal Services Agency
9275 Gunston Road
Fort Belvoir, Virginia 22060
703-693-0658
USCAAF Bar No. 38069